1 2	MICHAEL W. BARRETT, CITY ATTORNEY (SBN 155968) DAVID C. JONES, DEPUTY CITY ATTORNEY (SBN 129881) NAPA CITY ATTORNEY'S OFFICE (dcjones@cityofnapa.org) CITY OF NAPA P.O. BOX 660 NAPA, CA 94559		
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5	Telephone: (707) 257-9516 Facsimile: (707) 257-9274		
6	Attorneys for Defendant CITY OF NAPA and NAPA POLICE DEPARTMENT		
7			
8	IN THE UNITED STATES DISTRICT COURT		
9	NORTHERN DISTRICT OF CALIFORNIA		
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11	ROBERT JONES,	) Case No. C07-3054 JCS	
12	Plaintiff,	DEFENDANT CITY OF NAPA'S NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO FRCP RULE 12(b)(6) AND MOTION TO STRIKE	
13	vs.		
14	NAPA POLICE DEPARTMENT; COUNTY OF ) NAPA; CITY OF NAPA; MICHELLE JONES; )	PURSUANT TO RULE 12 (f)(2)	
15	THOMAS TOLER, dba Toler Bail Bonds; JOSE ROSSI; and DOES 1-100, Individually and as	September 12, 2008 ) TIME: 9:00 a.m.	
16	employees or Agents of THE CITY or County OF NAPA,		
17	Defendants.	The Honorable Jeffrey S. White	
18	Detendants.		
19	YOU ARE HEREBY NOTIFIED that on September 12, 2008 at 9:00 a.m., or as soon thereafter		
20	as the matter may be heard, in Courtroom 2, 17 <sup>th</sup> Floor, of the above-referenced court located at 450		
21	Golden Gate Avenue, San Francisco, California, Defendant City of Napa and its wrongly sued police		
22	department, the Napa Police Department, (jointly "City") will, and hereby does, move to dismiss		
23	Plaintiff's complaint pursuant to FRCP Rule 12(b)(6) on the grounds that Plaintiff's complaint, and each		
24	cause of action therein, fails to state a cause of action on which relief can be granted, as follows:		
25	Plaintiff's First Cause of Action under 42 U.S.C. Section 1983 is barred by his vandalism		
26	conviction, and the Supreme Court's <i>Heck v. Humphrey</i> doctrine which directs dismissal of civil rights cases which seek to undermine criminal convictions;		
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27	Plaintiff's Second Cause of Action	on states no viable Section 1983 claim for an	
28	<ul> <li>Plaintiff's Second Cause of Actio unreasonable search;</li> </ul>	on states no viable Section 1983 claim for an	

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July 21, 2008

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- Alternatively, Plaintiff's First and Second Causes fail because he has stated no viable Section 1983 claim for municipal liability against the City or its police department as required by Monell v. Dept. of Social Services, 436, U.S. 658 (1978) and its progeny;
- All of Plaintiff's state law causes of action (Causes 3 through 13) are barred by the statutes of limitations set forth in the California Government Claims Act:
- Alternatively, most of Plaintiff's state law causes of action (Causes 3,4,6,9,10,11,12,13) fail because they are not "fairly reflected" in his mandatory claim under the Government Claims Act;

Defendant City further notifies Plaintiff that it will, and hereby does, move pursuant to FRCP, Rule 12(f)(2), to strike Plaintiff's claims for punitive damages as contained in Complaint paragraphs 16, 18, 20, 22, 25, 28, 37, 40, 43, 46, 49 and Prayer paragraph 2. Those damages are not recoverable against Defendant City as a matter of law.

The City's motions are based on this Notice, the attached Memorandum of Points and Authorities and Request for Judicial Notice and the attached exhibits, on all documents on file in this matter, and on such argument as is permitted at the hearing.

## CITY OF NAPA

By:

DAVID C. JONES, Deputy City Attorney Attorney for Defendant CITY OF NAPA and NAPA POLICE DEPARTMENT